* **The Hon'ble Sri Justice V.V.S.RAO**

+ Writ Petition No.6628 of 2006

% 04.4.2006

£ I.V.Saibaba Reddy, S/o.Subramanyam Reddy
and others

…Petitioner

Vs.

$ The Revenue Divisional Officer, Nellore, Nellore District
And another

… Respondents

! For the petitioner : Sri P.Gangarami Reddy

^ For the Respondents : The Assistant Government Pleader for Revenue (General)

<Gist:

>Head Notes:

? Cases Referred

1. (1996) 6 SCC 606
2. AIR 1954 Nag 71
3. (1988) 4 SCC 419

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.6628 of 2006

04.4.2006

Between:

I.V.Saibaba Reddy, S/o.Subramanyam Reddy
and others

… Petitioners

AND

The Revenue Divisional Officer, Nellore, Nellore District
And another

… Respondents

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.6628 of 2006

ORDER:

The petitioner is allegedly owner of agricultural land admeasuring Acs.2.53½ in survey Nos.1097 and 1098 situated in Nellore Bit-II. It appears, the second respondent approached the Mandal Revenue Officer (MRO), Nellore for issue of pattadar passbooks based on agreement of sale. The same was decided by the MRO in favour of the second respondent. Alleging that the agreement of sale based on which the second respondent claimed title and occupation, is a forged document and also for other grounds, the petitioner filed an appeal before the first respondent herein on 13.6.2005. The same is kept pending. Aggrieved by the same, the present writ petition is filed. The petitioner seeks a direction to the first respondent to enquiry into the matter and send the document to the Director of Forensic Science Laboratory, and dispose of the appeal expeditiously.

Heard the learned Counsel for petitioner and learned Assistant Government Pleader for Revenue (General).

Learned Counsel for the petitioner placed reliance on Section 10 of A.P. Rights in Land and Pattadar Passbooks Act, 1971 (the Act, for

short) in support of the submission that all the authorities under the Act are vested with the similar powers as are vested in a civil court under Code of Civil Procedure, 1908 (CPC) and, therefore, there is no bar for the first respondent to send the disputed document to handwriting expert. **Per contra**, learned Assistant Government Pleader submits that the authorities under the Act have powers under CPC only insofar as summoning and enforcing attendance of the persons and requiring discovery and production of documents and there are no powers to send the questioned documents to handwriting expert.

The question before this Court is whether recording authority or appellate/revisional authority is vested with all powers under CPC. Section 10 of the Act reads as under.

> **10. Powers of recording and appellate authorities**:-
> (1) A recording authority or an appellate authority or any other officer shall for the purpose of holding any enquiry under this Act, have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (Central Act 5 of 1908) when trying a suit in respect of the following matters, namely:
> (a) Summoning and enforcing the attendance of any person and examining him on oath;
> (b) Requiring the discovery and production of documents; and
> (c) Any other matter which may be prescribed.
> (2) The provisions of Section 5 and Section 12 to 24 of the Limitation Act, 1963, shall apply for the purposes of extension and computation of the periods prescribed in Sections 3(3), 4(1), 5(5), 5A and 5B of this Act.

When the legislature decides to confer the powers on the authorities as are vested in the civil court only with reference to certain matters, this Court cannot interpret the provision in a manner of conferring all powers under CPC on the authorities.

In this case, a reference may be made to the decision of the Supreme Court in **All India Indian Overseas Bank SC and ST Employees' Welfare Association v Union of India**[1]**.** In the said case, the National Commission for Scheduled Castes and Scheduled Tribes directed the Executive Director of Indian Overseas Bank (IOB) to stop promotion process pending further investigation into the allegation of contravention of Government directives relating to reservation for SC/ST employees in IOB. Accordingly, IOB stayed the

promotions. IOB Officers' Association and other candidates challenged the same before Delhi High Court by filing a writ petition. On the ground that National Commission had no power to issue interim orders, the writ petition was allowed. The same was challenged by All India Indian Overseas Bank SC and ST Employees' Welfare association. Reliance was placed on clauses (5) and (8) of Article 338 of Constitution of India in support of the contention that the Commission had power to pass such orders. Be it noted that sub clauses (a) (b) and (f) of Clause 8 of Article 338 of Constitution of India are *in pari materia* with clauses (a)(b) and (c) of Section 10(1) of the Act. The Hon'ble Supreme Court after considering clauses (5) and (8) of Article 338 of Constitution of India and also the earlier decision in **M.V.Rajwade v Dr.S.M.Hassan**[2] and **Baliram Waman Hiray (Dr) v Justice B.Lentin**[3] (in relation to Section 4 of Commissions of Inquiry Act, 1952), laid down as under.

> Interestingly, herein, in clause (8) of Article 338, the words used are "the Commission shall … have all the powers of the Civil Court trying a suit". But the words "all the powers of a Civil Court" have to be exercised "while investigating any matter referred to in sub-clause (a) or inquiring into any complaint referred to in sub-clause (b) of clause 5". All the procedural powers of a civil court are given to the Commission for the purpose of investigating and inquiring into these matters and that too for that limited purpose only. The powers of a civil court of granting injunctions, temporary or permanent, do not inhere in the Commission nor can such a power be inferred or derived from a reading of clause (8) of Article 338 of the Constitution.

The submission of the learned counsel that all powers of CPC are conferred on the authorities under the Act cannot be accepted. It is well settled principle of interpretation that whatever is not specifically mentioned is deemed to have been excluded by the Legislature and it is not possible to accept the submission of the learned counsel for the petitioner.

There is no denial that the appeal is still pending before the first respondent. The petitioner herein can raise all the grounds including the one he has raised before this Court that the agreement relied on by the second respondent is a fabricated and forged document. The first respondent can decide the same in accordance with law. The appeal

pending before the first respondent may be disposed of, within a period of three weeks from the date of receipt of a copy of this order, without in any manner influenced by any observation made herein above.

The writ petition, with the above observations and directions, is accordingly disposed of. No costs.

(**V.V.S.RAO,J**)

April 04, 2006.
NOTE:
L.R.Copy be marked.
(By order) YS

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[1] (1996) 6 SCC 606

[2] AIR 1954 Nag 71

[3] (1988) 4 SCC 419